IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 27081 of 2006(Y)

PETITIONER:

SMT.K.KOMALAM, AGED 43,
MUTHARAVALAPPIL HOUSE, P.O.ANCHERY,
TRICHUR.

BY ADV. SRI.P.GOPALAKRISHNA MENON
SRI.M.JITHESH MENON

RESPONDENTS:

1. THE REGIONAL TRANSPORT AUTHORITY,
THRISSUR.

2. THE SECRETARY, REGIONAL TRANSPORT
AUTHORITY, TRISSUR.

3. K.V.BALAKRISHNAN, KURUVATH HOUSE,
P.O.ANCHERY, TRICHUR.

4. M/S.SREERAM INVESTMENTS LIMITED,
IST FLOOR, ARAFA TOWERS, VELIYANNUR P.O.,
TRISSUR.

5. STATE TRANSPORT APPELLATE TRIBUNAL,
ERNAKULAM.

BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.
SRI.I.DINESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF KL-8/C.1773.

P2. COPY OF THE LAST FITNESS CERTIFICATE DTD.13.1.2006.

P3. COPY OF THE PROCEEDINGS DTD.19.7.05.

P4. COPY OF THE ORDER DTD.22.12.05 IN W.P.C.NO.35841/05.

P5. COPY OF THE PROCEEDINGS OF R2. DTD.7.1.06.

P6. COPY OF THE APPEAL MEMORANDUM OF MVAA.NO.56/06. DTD.27.1.06.

P7. COPY OF THE JUDGMENT DTD.17.8.06 IN MVAA.NO.56/06.

P8. COPY OF THE APPLICATION FOR TEMPORARY PERMIT DTD.12.9.06.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.27081 of 2006

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Dated this the 22nd day of August, 2007

J U D G M E N T

The petitioner is a holder of stage carriage permit in respect of stage carriage bearing registration No.KL-8/C.1773. The petitioner filed application for replacement of the said stage carriage by KL-8/C.7047. This was rejected by the 2nd respondent on the ground that the engine number of the old vehicle was seen locally punched on inspection. The petitioner filed an appeal before the STAT as MVAA No.65/06. The same has been dismissed on two grounds. The first is that since the old vehicle was not being operated in the route at all, by virtue of Rule 152, the permit is liable to suspension or cancellation, for which proceedings are pending and that during the pendency of the proceedings, application for replacement cannot be allowed. The second is that as per Rule 174(2), the transport authority has the discretion to reject the application if the holder of the permit has

contravened the provisions of the permit or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease. The finding is that the old vehicle was seized by the financier on the ground of violation of the terms of the hypothecation agreement. Ext.P5 order of the original authority and Ext.P7 order of the appellate authority are under challenge before me.

2. The petitioner raises three contentions. The first is that going by Rule 133 of the Kerala Motor Vehicles Rules, power delegated to the Secretary, RTA is only for allowing replacement of the vehicle and by virtue of that power, the Secretary cannot reject the application and can only place the matter before the RTA. The second is that the STAT has rejected the appeal on a totally different ground which has not been considered by the original authority at all. The third is that, since the petitioner has now settled the disputes with the financier in respect of the old vehicle, there cannot be any impediment in allowing the application for replacement.

3. I do not agree with the contentions of the petitioner. Of course the petitioner would point out that in Rule 133 the

words used are "grant or refuse" whereas, in the case of replacement only the word, "allow" is used and the word, "reject" is conspicuously absent. I am not satisfied that such absence of the word "reject" would deprive the Secretary, RTA of the power to reject the application. The power to allow would include the power to reject also. Regarding the second contention, I do not think that the STAT is deprived of the power to consider the matter on any other ground which is not considered by the original authority. In fact STAT has called for the files and perused the same, and it is as per the information available from the files only that the decision was arrived at.

4. Regarding the third contention, I feel that if the petitioner has got a case that he has settled the matter with the financier, it is open to him to file a fresh application pointing out that fact.

5. Although the appellate Tribunal is clothed with the power to consider the appeal on other grounds also in the file, I am of opinion that that would not be done without prior notice to the petitioner and opportunity to raise his contention against such grounds. From a reading of Ext.P7 order I do not find any

such exercise having been undertaken. Whatever that be, now that the petitioner submits that the RTA has not taken any further action on the proceedings for suspension or cancellation as per Rule 152, it would be sufficient to permit the petitioner to file another application for replacement of the vehicle. If the petitioner makes such an application, the 2nd respondent shall consider the same and pass appropriate orders taking into account the further developments. While doing so, the petitioner shall be put on notice regarding the grounds on which such application is proposed to be rejected, if the 2nd respondent proposes to reject the same, and give the petitioner a reasonable opportunity to show-cause against the same.

The writ petition is disposed of with the above directions.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.